Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Federal-State Joint Board on Universal Service	CC Docket No. 96-45

COMMENTS OF TELSCAPE COMMUNICATIONS, INC. ON PETITION OF AT&T CORP. FOR LIMITED RECONSIDERATION OF REPORT AND ORDER AND NOTICE OF PROPOSED RULEMAKING, FCC 04-87

Telscape Communications, Inc. ("Telscape") hereby submits these comments on the July 21, 2004, petition by AT&T Corp. ("AT&T") for limited reconsideration of the Commission's April 29, 2004, Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Lifeline and Link-up,* WC Docket No. 03-109, FCC 04-87.[1]

Telscape supports AT&T's petition. Telscape is a minority-owned telecommunications carrier based in Monrovia, California. Its primary focus is on the provision of local and long distance telephone service to Spanish-language-dominant Hispanic households, largely in inner-city areas. To the extent feasible, Telscape's operations are fully Spanish/English bilingual, from the end-user prompts that are programmed into its switching equipment, to its billings, to its customer support systems and personnel.[2] In addition, Telscape maintains retail outlets, which it calls "telemercados," that are located in areas where it enjoys

[1] The request for comments issued by the Wireline Competition Bureau on August 30, 2004, requested that such comments be filed in this docket, as well as WC Docket 03-109.

[2] In certain instances, Telscape has been required to rely on unbundled local switching or resale of incumbent services until it has built a sufficient base of customers within a geographic area to permit it to transition to its own network. In those cases, Telscape is not able to offer full bilingual capability.

relatively high service penetration. Telscape's services and its telemercados are designed to meet unique telecommunications and cultural needs of the Hispanic community. However, Telscape's service is offered on a nondiscriminatory basis and is advertised and available to all residential subscribers within its service areas.

Due to the demographic characteristics of its primary target market, Telscape has had significant experience in providing service to low-income subscribers. Telscape currently serves more than 40,000 low-income support eligible residential subscribers in California, making it the third largest supplier of competitive wireline telecommunications services to eligible low-income subscribers in the state.[3] These low-income support eligible subscribers represent more than half of the subscribers served by Telscape in California.

Telscape has recently expanded its operations into Nevada and is planning to establish operations in the very near future in other states where there are substantial Spanish-speaking populations. Based on its experience in California, Telscape believes that it is vital to its long-term success, and also vital to the interests of its potential subscribers, that it be able to offer its services at reduced rates to low-income eligible subscribers. However, unlike California, which has a well-established state-funded universal service program, other states, such as Nevada, do not provide significant funding of service to low-income subscribers, except through the federal Universal Service program, which is a available only to ETCs. Therefore, as a matter of economic feasibility, Telscape must obtain ETC status in these other states in order to be able to compete on an even footing with incumbents for low-income subscribers.

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[3] According to California Public Utilities Commission data.

Under the Commission's existing rules and the ETC-designation procedures followed by Nevada and other states, there is no differentiation between the designation of ETC's for the purpose of receiving low-income support funds and the designation of ETC's for the purpose of receiving high-cost support funds. As a consequence, in order to be able to be able to serve low-income customers located in a densely-populated, low-cost area, such as Las Vegas, a company such as Telscape may be required to meet ETC standards that are intended primarily to preserve the very scarce level of funds that are available for the actual build-out of facilities in unserved, high cost rural areas.

Opponents to Telscape's request for ETC designation in Nevada, including the incumbents and Nevada commission staff, have asserted, for example, that to qualify for ETC status, Telscape must be able and willing to serve low-income end users in all exchanges, both high cost exchanges, where unbundled loop prices are prohibitively expensive, as well as low cost exchanges where loop prices are such that competitive carriers may actually have a reasonable ability to compete. Moreover, they have argued that Telscape must demonstrate that it will have the ability to purchase incumbent ETC's networks in these areas, take over their services, and extend the network into unserved areas in the event the incumbents choose to relinquish their ETC status. Telscape has even been criticized for its focus on Spanish-speaking subscribers as evidence that Telscape would not be compliance with the "spirit" of nondiscriminatory service requirements even though Telscape may be advertising and making its services available to all end users in its service area. Further, it has been suggested that ETC status should be denied because Telscape's provision of reduced-price services for low-income subscribers in competition with incumbents could incite a price-war, with ever-downwardspiraling prices ultimately undermining the ability of incumbent ETCs to continue to serve other customers.[4]

There simply is no reasonable justification for these types of hurdles when universal support funds will flow through directly to the end user. Requiring new entrants to conform their operations in a manner that would overcome the types of objections that have been raised to Telscape's ETC designation is not feasible and would leave them in positions where they are unable to compete against incumbents. Thus, application of such criteria would operate as a barrier to competition, in violation of 47 U.S.C. § 253(a). Moreover, the resulting absence of competition is inconsistent with goal of affording low-income subscribers with the same opportunities to enjoy competitive service options as those who are more well off.

For these reasons, Telscape recommends that the Commission adopt guidelines encouraging, if not requiring, states to limit requirements for ETC designation in cases where high-cost support funding is not implicated and the applicant for ETC status commits to reasonable measures designed to ensure ongoing integrity of its operations and proper use of low-income support funds.

Although the Commission has not, in the past, elected to differentiate between ETC's who are eligible to participate in the low-income program and those who may be entitled to receive high cost support, there is no apparent reason why the Commission could not establish different eligibility criteria for participation in those programs. Indeed, Telscape submits that the differences in the two programs are such that eligibility status can and should be based on varying criteria. Where a competitive ETC is flowing through low-income support directly to

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[4] It should be noted that the viewpoints expressed by the opponents to Telscape's request have not been adopted by the Nevada Commission. Nevertheless, Telscape has temporarily withdrawn its request for ETC designation in Nevada based largely on these objections. Telscape plans to re-submit a very focused

eligible subscribers in the form of dollar-for-dollar reductions in rates, there is little reason for imposing anywhere near the same types of eligibility criteria that would be reasonable in the case of a carrier who is proposing to use universal service funds to install a duplicate network or to build out plant to serve previously-unserved end users in high cost areas.

In the former case, the funds are actually used by low-income end users to obtain telephone service at reduced rates on a real-time basis. If, for some reason, the carrier's service does not meet the needs of low-income subscribers, they will look elsewhere for service and the carrier will not receive universal service funds. On the other hand, if the carrier's operations fail, affected end users will be able to port their service, <u>along with all universal service support</u>, to another ETC. Thus, the purposes of the fund and fund resources are preserved in either instance.

By contrast, where funds are used to construct new plant or in operations, which typically is the case with high-cost support, there may very well be a considerable degree of risk, both as to whether the operation will be economically feasible over the long term and whether the benefits of the federal subsidy will outweigh the costs of the subsidy. Naturally, ETC determinations in these cases are not easily made and require careful weighing of the interests of the carriers who are competing for the subsidies and the interests of the end users who will potentially benefit depending on which carrier wins the subsidies. The potential for failure in such cases may well be quite high and the result could be a complete loss of service to end users.

Because of the absence of any real potential for harm or abuse where a CLEC, such as Telscape, is seeking low-income support funding to provide service at reduced rates to eligible subscribers, and the potentially serious impacts that excessive ETC-designation criteria can have on the ability of new carriers to provide service to low-income subscribers, Telscape

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request that will attempt to obviate certain of these objections; however, Telscape is uncertain whether it will be successful in gaining ETC status.

recommends that the Commission establish a separate low-income-support-only ETC category for carriers that: (1) meet standard entry and operating requirements for CLECs; (2) qualify for ETC status under 47 U.S.C. § 214(e) and Commission rules; and (3) certify that they it will seek only lifeline or link up funds, which it will pass through, on a dollar-for-dollar basis, to eligible subscribers.[5]

In addition, to ensure that such carriers' ability to gain ETC status and provide competitive service options is not thwarted by unreasonably broad serving requirements, the Commission should encourage states to permit CLECs to designate initial serving areas on an ILEC wire-center-by-wire-center basis. The ability to do so will help prevent a CLEC from being forced to serve end users out of wire centers where loop prices are too high to enable it to economically provide service or where there are insufficient numbers of potential subscribers to justify the installation of the collocation and transport arrangements necessary to provide service. Although an "all-or-nothing" service area policy might, by some reckoning, serve some important policy interest, the plain fact of the matter is that the inability of the CLEC to designate the specific service area that it is reasonably capable of serving will operate as a substantial barrier to entry and may preclude the provision of competitive reduced-rate service options to low-income subscribers anywhere in the service area.

[5] In addition, it may be reasonable for states to impose other requirements to ensure that the ETC's service is consistent with competitively-neutral service quality standards, appropriate consumer protection measures are in place, and services will remain functional in emergencies.

Respectfully submitted this 3rd day of September, 2004, at San Francisco, California.

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